

1 NOTE: CHANGES MADE BY THE COURT
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC B. FROMER CHIROPRACTIC,
INC., a California corporation,
individually and as the representative
of a class of similarly-situated persons,

Case No.: 2:15-cv-04767 AB

CLASS ACTION

v.
NEW YORK LIFE INSURANCE
AND ANNUITY CORPORATION,
NYLIFE SECURITIES LLC, and
JOHN DOES 1-10,

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Defendants.

The Court, having reviewed the Motion for Preliminary Approval of Class Action Settlement (“Motion”), the evidence and argument provided by the parties, and the pleadings and other papers filed in this action, hereby GRANTS preliminary approval to the Class Action Settlement Agreement, as detailed below.

NOW, THEREFORE, IT IS HEREBY ORDERED and adjudged as follows:

1. Pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, the settlement of this action, as embodied in the terms of the Settlement Agreement

1 attached to the Joint Motion, is hereby preliminarily approved as a fair, reasonable,
2 and adequate settlement of this case in the best interests of the Settlement Class in
3 light of the factual, legal practical, and procedural considerations raised by this
4 case. The Settlement Agreement is incorporated by reference into this Order (with
5 capitalized terms as set forth in the Settlement Agreement) and is hereby
6 preliminarily adopted as an Order of this Court.

7 2. Pursuant to Rule 23 (b) (3) of the Federal Rules of Civil Procedure, by
8 stipulation of the parties, and for the purpose of settlement, the Court hereby
9 certifies the following class (the “Settlement Class”): “All persons who (1) on or
10 about March 25, 2015 or on or about March 31, 2015 (2) were successfully sent
11 telephone facsimile transmissions titled “Savings and Investing 20/20 for Medical
12 Professionals.” Excluded from the Settlement Class are (a) the Defendants and
13 their present and former officers, directors, shareholders, members, managers,
14 employees and their successors, assigns and legal representatives; (b) all persons
15 who opted out of the settlement by timely submitting their opt-out request; and (c)
16 the Court and its officers.

17 3. The Court finds that class certification is appropriate because (a) the
18 Settlement Class is so numerous that joinder of all members is impractical, (b) there
19 are common questions of law and fact that predominate over any questions
20 affecting only individual class members, (c) Plaintiff will fairly and adequately
21 protect the interests of the Settlement Class, and (d) a class action is an appropriate
22 method for the fair and efficient adjudication of this controversy.

23 4. The Court appoints Plaintiff, Eric B. Fromer Chiropractic, Inc.
24 (“Plaintiff”), as the “Class Representative” and appoints Brian J. Wanca of
25 Anderson + Wanca as “Class Counsel” pursuant to Rule 23 (g).

26 5. The Court approves and appoints Class-settlements.com as the
27 settlement administrator.

28 6. The Settlement Agreement proposes notice to the Settlement Class by

1 facsimile transmission, and by U.S. mail to those class members to whom facsimile
2 notice is unsuccessful after three attempts if address information is available or can
3 be obtained, and by maintaining a settlement website. The Court finds that such
4 notice constitutes valid, due, and sufficient notice to the Class Members pursuant to
5 Federal Rule of Civil Procedure 23 (e) (1), California Civil Code section 1781(d),
6 the United States Constitution, and any other applicable law. The plan is approved
7 and adopted.

8 7. The Court finds that the Class Notice and Claim Form (attached to the
9 Settlement Agreement as Exhibit 2), comply with Rule 23 (e) (1) of the Federal
10 Rules of Civil Procedure, are appropriate as part of the notice plan, and are
11 approved and adopted. The Court orders that the parties provide the notice to the
12 Class as proposed.

13 8. The Court hereby sets deadlines and dates for the acts and events set
14 forth in the Settlement Agreement and directs the Parties to incorporate the
15 deadlines and dates in the Class Notice:

- 16 (a) The Notice shall be sent by the Settlement Administrator on or
17 before March 10, 2017;
- 18 (b) Claim forms shall be submitted, in accordance with the terms of the
19 Settlement Agreement and Notice, on or before June 8, 2017;
- 20 (c) Requests by any Settlement Class member to opt out of the
21 settlement must be submitted to class Counsel (with a copy to
22 Defendants' Counsel), in accordance with the Notice, on or before
23 April 24, 2017, or be forever barred; and
- 24 (d) Objections and motions to intervene, including supporting
25 memoranda, shall be filed in this Court and postmarked and served
26 on Class Counsel and Defendants' counsel, in accordance with the
27 terms of the Settlement Agreement and Notice, on or before April
28 24, 2017, or be forever barred.

1 9. Brief in support of final approval shall be filed on or before June 12,
2 2017.

3 10. **The Motion for Attorneys' Fees shall be filed on or before June 12,**
4 **2017.**

5 11. The final approval hearing, set forth in the Class Notice, is hereby
6 scheduled for July 10, 2017 at 10:00 a.m., in Room 7B.

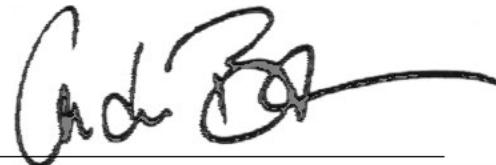
7 The hearing date and/or time for the Fairness Hearing may be moved *sua*
8 *sponte* by the Court or pursuant to a stipulation by the parties subject to Court
9 approval without providing additional notice to the Class Members.

10 The Court hereby approves and adopts the procedures governing requests to
11 be excluded from the Class, or for objecting to the proposed Settlement, as
12 provided for in the Settlement Agreement.

13 If the Settlement is not approved or consummated for any reason whatsoever,
14 then the Settlement Agreement and all proceedings in connection therewith shall
15 terminate without prejudice to the status quo ante and rights of the parties to the
16 action as they existed prior to the date of execution of the Settlement Agreement,
17 except as otherwise provided in the Settlement Agreement.

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19 **IT IS SO ORDERED.**

20 DATED: February 22, 2017



21 **Hon. André Birotte Jr.**
22 United States District Judge